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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9

10 O.R., BY AND THROUGH HER PARENTS,  
11 SIG AND LORI ROGICH AND SIG AND  
LORI ROGICH, INDIVIDUALLY,

12 Plaintiffs

Case No.: 2:17-cv-01541

13 v.  
14 CLARK COUNTY SCHOOL DISTRICT,  
15 Defendant

16

17 **COMPLAINT**

18

19 **A. INTRODUCTION**

20 1. This action arises under the Individuals with Disabilities Education Act, 20  
U.S.C. § 1400, *et seq.* (“IDEA”), Title II of Americans with Disabilities Act, 42 U.S.C. § 12131,  
21 *et seq.* (“ADA”) and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Section  
22 504”). This is an appeal from the decision, dated March 8, 2017, of the Decision on Appeal by  
the Nevada State Review Officer (“SRO Dec.”), attached as Exhibit 1. The SRO reversed a  
23 decision of Independent Hearing Officer, dated November 14, 2016 (“IHO Dec.”), attached as  
24 Exhibit 2. The IHO determined that Plaintiffs Sig and Lori Rogich (“Parents”) had demonstrated  
25 the failure of the Clark County School District (“District” or “Clark County”) to provide a free  
26 appropriate public education (“FAPE”) to O.R. and were therefore entitled to tuition and  
27 appropriate public education (“FAPE”) to O.R. and were therefore entitled to tuition and  
28

1 transportation reimbursement for June 2014, the 2014-2015, 2015-2016 and 2016-2017 school  
2 years. *IHO Dec.* at 31.

3       2. In June 2014, the District proposed an Individualized Educational Program  
4 (“IEP”) that failed to take into account and address O.R.’s needs as identified in her most recent  
5 evaluations and did not offer a free, appropriate public education. The District next proposed an  
6 IEP in May 2016 that failed to take into account and address O.R.’s needs as identified in her  
7 most recent evaluations and did not offer a free, appropriate public education.

8           **B. JURISDICTION AND VENUE**

9       3. Jurisdiction is based upon 28 U.S.C. § 1331, as this action arises under the  
10 Constitution and laws of the United States. Jurisdiction is also based upon IDEA, 20 U.S.C. §§  
11 1415(i)(2), (i)(3)(A), (i)(3)(B)(i)(I), ADA, 42 U.S.C. §12133 and Section 504, 29 U.S.C. §  
12 794(a).

13       4. Plaintiffs have fully exhausted their administrative remedies as required by the  
14 IDEA, 20 U.S.C. § 1415(f) and (g).

15       5. This civil action is timely filed under 20 U.S.C. §1415(i)(2)(B), as the decision of  
16 the State Review Officer was rendered on March 8, 2017, and this action is filed within 90 days of  
17 that decision. Nevada state law contains no explicit time limitation for bringing such an action.

18       6. Venue in this district is proper under 28 U.S.C. § 1391(b). All parties are resident  
19 in or maintain offices in Clark County, Nevada, within the District of Nevada.

20           **III. PARTIES**

21       7. O.R. was born in 2002. She lives with her Parents, within the boundaries of the  
22 Clark County School District.

8. Plaintiffs, Sig and Lori Rogich are residents of Las Vegas, Clark County, in the State of Nevada.

9. Throughout her education, O.R. has been eligible for special education and related services under the IDEA, and no party disputes her eligibility for these services. Comprehensive psychoeducational evaluations, conducted in 2009 and 2013, resulted in the following diagnoses, among others, for O.R.: Learning Disorder NOS (Nonverbal Learning Disorder-NLD; Reading Disorder (Developmental Dyslexia); Mathematics Disorder; Disorder of Written Expression; Generalized Anxiety Disorder. She also has medical conditions that impact her ability to learn. Therefore, she has impairments that substantially limit her in major life activities, and thus is entitled to the protections of Section 504 and the ADA.

10. Clark County School District is a Local Education Agency with its offices at 5100 W. Sahara Avenue, Las Vegas, Nevada 89146. The District is responsible for providing special education and related services to all eligible children within its borders. It is responsible for honoring the substantive and procedural rights of eligible children and their parents under the IDEA, Section 504 and the ADA.

11. The District is a recipient of federal financial assistance.

12. The District is a public entity responsible for compliance with the guarantees of the ADA.

#### **IV. PROCEDURAL HISTORY**

13. On May 26, 2016, the District received a Due Process Complaint (“DPC”) challenging the appropriateness of a May 27, 2014 IEP, filed on behalf of O.R. *IHO Dec.* at 1. The IHO denied the District’s motion to dismiss the complaint on statute of limitation grounds

1 when she found that the facsimile transmissions and the District's "received" stamps indicated  
2 that the District received the DPC on May 26, 2016. *Id.*

3       14. At a Prehearing Conference on September 29, 2016, the parties stipulated to  
4 amend the DPC to challenge the appropriateness of the IEP offered on June 8, 2016.  
5

6       15. On October 4, 2016, Parents filed a Motion to Compel Discovery asking for  
7 program descriptions and methodologies proposed for O.R. or that may be otherwise relevant to  
8 this matter. The IHO denied the Motion, holding that if the 2016 IEP had identified a specific  
9 reading program, then Parents would be entitled to the information. Because the IEP identified  
10 no such program(s), Parents were not entitled to the information.  
11

12      **V. THE LEGAL FRAMEWORK**

13      **A. IDEA**

14       16. "To meet its substantive obligation under the IDEA, a school must offer an IEP  
15 reasonably calculated to enable a child to make progress appropriate in light of the child's  
16 circumstances." *Andrew F. v. Douglas County Sch. Dist.* RE-1, No. 15-827, slip op. at 11.  
17

18       17. "In determining what it means to 'meet the unique needs' of a child with a  
19 disability, the provisions governing the IEP development process are a natural source of  
20 guidance: It is through the IEP that '[t]he [FAPE] required by the Act is tailored to the unique  
21 needs of' a particular child." *Id.* at 13 (citation omitted). IDEA's provisions do not impose only  
22 procedural requirements, or a checklist of items the IEP must address. *Id.* The requirements "are  
23 there for a reason and their focus provides insight into what it means, for purposes of the FAPE  
24 definition, to 'meet the unique needs' of a child with a disability." *Id.* (citing 20 U.S.C. §  
25 1401(9),(29)).  
26  
27

1       18.   IDEA contemplates that the fact-intensive exercise of developing an IEP “will be  
2 informed not only by the expertise of school officials but also by the input of the child’s  
3 parents.” *Id.* at 11. Procedures that provide for meaningful parental participation are particularly  
4 important. *M.C. v. Antelope Valley Union High Sch. Dist.*, No. 14-56344, 2017 U.S. App. LEXIS  
5 5347, at \*4 (9th Cir. March 27, 2017).

7       19.   The requirements for an appropriate IEP include:

- 8           a. “It is constructed only after careful consideration of the child’s present  
9 levels of achievement, disability, and potential for growth.” *Id.* at 12  
10 (citing 20 U.S.C. §§ 1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv)) (emphasis  
supplied).
- 11          b. Every IEP must begin with an accurate description of the child’s present  
12 level of achievement, including explaining “how the child’s disability  
13 affects the child’s involvement and progress in the general education  
curriculum.” *Id.* at 13 (citing 20 U.S.C. § 1414(d)(1)(A)(i)(I)(aa)).
- 14          c. The IEP then sets out “measurable annual goals” designed to enable the  
15 child to be involved in and make progress in the general education  
curriculum. *Id.* (citing 20 U.S.C. § 1414(d)(1)(A)(i)(II), (IV)).
- 16          d. The school district must conduct periodic evaluations that assess the child  
17 in all areas of suspected disability; are “sufficiently comprehensive to  
18 identify all of the child’s special education and related service needs,” and  
19 provide “relevant information that directly assists” in determining the  
20 child’s educational needs. 20 U.S.C. §§ 1414(a)(1)(C)(i)(II),  
1414(a)(2)(A), 1414(b)(2)(A)(ii), 1414(b)(3)(B); 34 C.F.R.  
21 §§300.304(c)(1)(ii—iv), (2), (4), (6), (7).
- 22          e. The school district must provide services (including specially designed  
23 instruction, supplementary aids and services, program modifications and  
24 supports for school personnel, based on peer-reviewed research to the  
25 extent practicable) that enable the student to advance appropriately toward  
attaining meaningful annual goals, to be involved in and progress in the  
general education curriculum and to participate in extracurricular and  
nonacademic activities. 20 U.S.C. §§ 1414(d)(1)(A)(i)(IV), 1414(d)(3).
- 26          f. The school district must plan for the student to make reasonable progress  
27 toward the goals in the student’s IEP, and, if the student fails to make  
28 reasonable progress, must make changes in the goals or the services in the

1 IEP to enable the student to make progress. 20 U.S.C. §§ 1414(c)(1)(B),  
2 1414(d)(4); 34 C.F.R. § 300.324.

3 20. “The IEP must aim to enable the student to make progress. After all, the essential  
4 function of an IEP is to set out a plan for pursuing academic and functional advancement. See 20  
5 U.S.C. § 1414(d)(1)(A)(i)(I)-(IV). . . A substantive standard not focused on student progress  
6 would do little to remedy the pervasive and tragic academic stagnation that prompted Congress  
7 to act.” *Endrew F.*, slip op. at 11.

8 21. The progress contemplated by the IEP must be “appropriate in light of the child’s  
9 circumstances.” *Id.* at 12, 15. If it is not a reasonable prospect for a child to achieve on grade  
10 level without a modified curriculum, “his educational program must be appropriately ambitious  
11 in light of his circumstances, just as advancement from grade to grade is appropriately ambitious  
12 for most children. . . .The goals may differ, but every child should have the chance to meet  
13 challenging objectives.” *Id.* at 14.

14 22. In reviewing an IEP, hearing officers and courts defer to school authorities “based  
15 on the application of expertise and the exercise of judgment.” *Endrew F.*, slip op. at 16. “By the  
16 time any dispute reaches court, school authorities will have had a complete opportunity to bring  
17 their expertise and judgment to bear on areas of disagreement. A reviewing court may fairly  
18 expect those authorities to be able to offer a cogent and responsive explanation for their  
19 decisions that shows the IEP is reasonably calculated to make progress appropriate in light of his  
20 circumstances.” *Id.*

21 **B. SECTION 504 AND THE ADA**

22 23. Section 504 and the ADA prohibit school districts such as Clark County from  
23 discriminating on the basis of disability.

1       24. Section 504 requires “the provision of an appropriate education” to students with  
2 disabilities. An appropriate education under Section 504 “is the provision of regular or special  
3 education and related aids and services that (i) are designed to meet individual educational needs  
4 of handicapped persons as adequately as the needs of non handicapped persons are met and (ii)  
5 are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and  
6 104.36.” 34 C.F.R. § 104.33(b).

8       25. Section 504 “is broader than the IDEA; it is concerned with discrimination in the  
9 provision of state services to all individuals with disabilities.” *A.G. v. Paradise Valley Unified*  
10 *Sch. Dist.*, 815 F.3d 1195, 1203 (9th Cir. 2016).

12       26. A school district violates Section 504 and the ADA if it denies a qualified  
13 individual with a disability a reasonable accommodation that the individual needs in order to  
14 enjoy meaningful access to the benefits of public services.

15       27. It is a denial of reasonable accommodation and a violation of the ADA and  
16 Section 504 if (1) a student needs disability-specific services to enjoy meaningful access to the  
17 benefits of a public education, (2) a school district was on notice that the [student] needed those  
18 disability-specific services, but did not provide those services, and (3) disability-specific services  
20 were available as a reasonable accommodation. *Mark H. v. Hamamoto*, 620 F.3d 1090, 1097 (9th  
21 Cir. 2010).

22       **VI. STANDARD OF REVIEW**

24       28. “Judicial review in IDEA cases ‘differs substantially from judicial review of other  
25 agency actions, in which courts are generally confined to the administrative record and are held  
26 to a highly differential standard of review.’” *M.C. v. Antelope Valley Union High Sch. Dist.*, No.  
27

1 14-56344, 2017 U.S. App. LEXIS 5347, at \*3 (9th Cir. March 27, 2017) (quoting *Ojai Unified*  
2 *Sch. Dist. v. Jackson*, 4 F.3d 1467, 1471 (9th Cir. 1993)).

3 29. Federal courts review whether the state has provided a FAPE *de novo*. *Id.*

4 30. Federal courts afford some deference to the administrative fact finder when the  
5 decision below is “thorough and careful.” *Id.* In a state where there is a second tier administrative  
6 hearing officer, such as the SRO in this case, federal courts defer to the SRO *unless* the SRO  
7 overturns the credibility determinations of the hearing officer. *Amanda J. v. Clark County Sch.*  
8 *Dist.*, 267 F.3d 877, 888-889 (9th Cir. 2001).

9 **VII. FACTS**

10 31. In 2007, the District determined that O.R. was eligible for special education and  
11 related services under the category “Other Health Impairment.” *IHO Dec.* at 6, FF 1; *SRO Dec.*  
12 at 5.

13 32. O.R. attended the District kindergarten program for most of the 2008-2009 school  
14 year, until Parents enrolled her in a private school. *IHO Dec.* at 6, FF 2; *SRO Dec.* at 5.

15 33. In December 2009 and March 2013, Pettigru Counseling Associates evaluated  
16 O.R. The District presented no testimony challenging the accuracy of any assessment admitted  
17 into evidence. *IHO Dec.* at 6-7, FF 3.

18 34. The March 2013 evaluation listed the following diagnoses for O.R.: Learning  
19 Disorder NOA (Nonverbal Learning Disorder-NLD); Reading Disorder (Developmental  
20 Dyslexia); Mathematics Disorder; Disorder of Written Expression; Generalized Anxiety  
21 Disorder; Dysthymic Disorder; Developmental Coordination Disorder (in partial remission);  
22 Mixed Receptive-Expressive Language Disorder (in partial remission); Phonological Disorder  
23 (in remission). *IHO Dec.* at 7, FF 4.

1       35. In light of O.R.’s nonverbal learning disorder and the myriad of other disorders  
2 listed in the previous paragraph, the 2013 evaluation indicated that O.R. requires a specific  
3 teaching methodology to receive an appropriate education. *IHO Dec.* at 7, FF 5.  
4

5       36. After listening to the witnesses, assessing their credibility, and reviewing the  
6 evidence, the IHO found that the recommendations in the 2009 and 2013 assessments were  
7 “comprehensive, addressing [O.R.’s] psychological, educational and social needs.” *IHO Dec.* at  
8, FF 9.

9       37. Parents provided the Pettigru assessment to the District in January 2014. After  
10 completing its own evaluation, the District proposed an IEP in May 2014.  
11

12       38. Regarding the May 2014 IEP, the IHO found:

- 13           a. The one reading comprehension goal in the IEP was contrary to the  
14 recommendations in the comprehensive Pettigru assessment. *IHO Dec.* at  
15 8-9, FF 10A.
- 16           b. The IEP reflects that Parents requested teachers trained in Orton-  
17 Gillingham methodologies and placement in a private school until the  
18 training is completed. The basis of its rejection of this request on the fact  
19 that the “IEP includes salient components from Orton-Gillingham in the  
20 accommodations/modifications and goals to provide a multi-sensory  
21 approach.” *IHO Dec.* at 9, FF 10F.
- 22           c. Based on credibility assessments related to the testimony of the Early  
23 Childhood Teacher and Child Find Administrator, who met O.R. for ten  
24 minutes in 2014, the IHO determined that the District had access to O.R.’s  
25 assessments and school reports for the development of the 2014 IEP, but  
26 failed to give them due weight. *IHO Dec.* at 9, FF 11.
- 27           d. The Early Childhood Teacher “did not demonstrate an understanding of  
28 [O.R.’s] unique academic needs as set forth in the Assessments that were  
available to the District.” *IHO Dec.* at 10, FF 13.
- 29           e. The District’s school psychologist “conceded that [O.R.] needed a multi-  
30 sensory program but would not name a program(s) the District used. *IHO Dec.* at 10, FF 14. The IHO rejected the school psychologist’s complaint  
31 that the IEP Team did not receive data for programming as not credible, in  
32 light of the documentation provided by Parents. *IHO Dec.* at 10, FF 15.

- 1 f. The IHO rejected as not credible the Compliance Monitor's testimony that
- 2 the District did not have O.R.'s present levels of functioning in 2014, in
- 3 light of the documentation provided by Parents. *IHO Dec.* at 11, FF 18,
- 4 19, 20.
- 5 g. The IHO found that Parents' witness, a pediatric neuropsychologist, was
- 6 credible. *IHO Dec.* at 11, FF 21, 22.
- 7 h. The IHO found his analysis of the 2014 IEP relevant and accepted his
- 8 expert opinion on the appropriateness of that IEP. *IHO Dec.* at 11-12, FF
- 9 23.
- 10 i. Based upon her assessment of the witnesses who testified, the IHO found
- 11 that "the District predetermined that under no circumstances would a
- 12 methodology be put into" O.R.'s IEP. *IHO Dec.* at 12, FF 25.
- 13 j. Parents provided the requisite ten-day notice of disagreement with the IEP
- 14 and intention of the right to seek reimbursement. *IHO Dec.* at 12, FF 26.

15 39. Regarding the June 2016 IEP, the IHO found:

- 16 a. The District's Transition Specialist became familiar with O.R. when she
- 17 learned that there was a new report to review. *IHO Dec.* at 13, FF 28.
- 18 b. The IHO credited the Transition Specialist's explanation for the delay of
- 19 the IEP meeting until May 2016. *IHO Dec.* at 13, FF 29.
- 20 c. The Transition Specialist reviewed the private neuropsychologist's report.
- 21 *Id.*
- 22 d. The private neuropsychologist, like the previous evaluators, recommended
- 23 the Orton-Gillingham multi-modal approach for all subjects, not just
- 24 reading. *IHO Dec.* at 13-14, FF 32.
- 25 e. The IHO concluded that the District witnesses did not demonstrate a
- 26 working knowledge of Orton-Gillingham, the methodology recommended
- 27 for O.R. *IHO Dec.* at 14, FF 33.
- 28 f. The IHO did not find the Special Education Teacher who testified to be
- 29 credible. She did find the private neuropsychologist to be credible. *IHO*
- 30 *Dec.* at 14, FF 36.
- 31 g. Parents cooperated in developing the IEP. Parents gave timely notice in
- 32 the beginning of May 2016 of their intention to place privately and seek

1 reimbursement. They participated in IEP meetings on May 19 and May  
2 27, 2016. *Id.*

- 3 h. The goals and benchmarks in the 2016 IEP provide “evidence that the  
4 [Parent provided] assessments were not considered” in the IEPs  
development. *IHO Dec.* at 15, FF 38D.

5 40. The IHO granted a motion *in limine* filed by Parents and precluded the District  
6 from presenting witnesses who could testify about available reading programs within the District.  
7 Prior to the hearing, the District had resisted producing information about available reading  
8 programs and the Hearing Officer did not compel disclosure, finding that the IEP did not identify  
9 any particular reading program. In light of the District’s position that Parents were not entitled to  
10 information about available methodologies, the IHO correctly precluded this testimony.

11 41. The SRO erred in relying upon the testimony regarding available methodologies  
12 within the District, at the appeal stage, of two witnesses, for the following reasons:

- 13 a. The SRO erred in reversing the IHO’s order precluding witnesses from  
14 testifying. As the Court recognized in *Endrew F.*, “[b]y the time any  
15 dispute reaches court, school authorities will have had a complete  
16 opportunity to bring their expertise and judgment to bear on areas of  
17 disagreement.” *Slip op.* at 16. Having refused to offer a cogent and  
18 responsive explanation to parents of available methodologies during the  
19 IEP process, the District was not entitled to present evidence on those  
methodologies at the hearing.
- 20 b. The two witnesses offered inconsistent testimony.

21 1) The Special Education Director of Silvestri Middle School testified  
that:

- 22 a. “Read 180 would have addressed her deficits in reading,  
23 fluency and comprehension, vocabulary and writing  
24 through the structures that that program.” Tr. 02/06/17  
(relevant excerpts attached as Exhibit 3) at pp. 15-16 .
- 25 b. “Touch Math has instruction from counting, addition,  
26 subtraction, up to some higher order skills, such as pre-  
27 algebra. It covers math and time. And areas in which she

1 need support was in addition, word problems, money and  
2 some counting.” Tr. 02/06/17 at p. 21.

- 3
- 4 c. The programs are research-based because “per law we were  
5 unable to utilize programs within the district that were not  
6 research base, programs were vetted through the curriculum  
7 department in order to be used District-wide and within  
8 classrooms. Compare Tr. 02/06/17 at pp. 15-16 to p.  
9 18:24-19:3.
- 10 d. While the district has “done significant training for teachers  
11 in implementing the Read 180 program”, she did not know  
12 who would be teaching O.R. She also did not know  
13 whether all of the teachers were trained in Touch Math as  
14 well. See Tr. 02/06/17 at p. 66-67. She “could not  
15 specifically state how much training they did or did not  
16 receive”. Id. at 67: 22-68:2.

17 2) The Director of Professional Development with Student Support  
18 Services, on the other hand testified to the following:

- 19 a. “I wouldn’t probably think she would need Read 180  
20 because those areas are in normal range. I think she needs not  
21 so much a program but direct instruction in reading, in fluency,  
22 comprehension.” Tr. 02/06/17 at p. 118.
- 23 b. “I do not believe she needed a [research based program], a  
24 purchased program. I think she needed specially designed  
25 instruction to help her in those areas.” Id. at 118: 20-119:1.
- 26 c. “Teachers have a variety of training. So everybody who  
27 has a teacher license has like a reading course. In Clark  
28 County we have long-term subs. So they typically have two  
years of college.” She continued: “We offer professional  
development as a regular course because we have a lot of staff  
with varying experiences. So if a teacher needs more training,  
then as a school District, we get that training to the person.  
But I don’t know her teachers specifically she would have been  
assigned to. She continued: “[Long term subs} are all over  
the Valley. There’s been a teacher, special education teacher  
shortage since as long as I’ve been around.” Id. at 119: 4 –  
120:1.
- d. “There are again other approaches, Touch Math, I’m  
probably not going to recommend because kids get too

1 dependent on the touch points, and there are some approaches  
 2 that work more on being proficient fluent again.” Tr. 02/06/17  
 3 at p. 124: 13-21.

4 42. When an SRO’s decision is inadequately reasoned, and it conflicts with a better-  
 5 reasoned IHO opinion, federal courts should defer to the IHO. *R.E. v. N.Y.C. Dep’t of Educ.*, 694  
 6 F.3d 167, 189 (2d Cir. 2012). In this case, this Court should rely upon the IHO opinion because  
 7 the SRO’s decision reversing the IHO is not thorough and careful for the following reasons:

- 8       a. The IHO determined that school employees did not consider evaluations  
        9 provided by the parents. This is a credibility determination of the District  
 10 witnesses. The SRO heard no live testimony relating to this area of dispute.  
 11 She only heard testimony regarding methodologies available in the  
 12 District. The SRO points to nothing in the record to support her decision to  
 13 reverse the IHO’s credibility determination that school officials failed to  
 14 consider the private evaluations. Further, the failure to consider recent  
 15 evaluative data constitutes a serious violation of IDEA’s procedures.
- 16       b. The SRO erred in relying upon retrospective testimony about what  
        17 methodologies could have been implemented, when the parents had no  
        18 way of knowing, when they made their placement decision, what  
        19 techniques would be used. See *R.E.*, 694 F.3d at 193-194 (because SRO’s  
        20 reliance on teacher’s retrospective testimony inappropriate and IHO’s  
        21 decision sufficiently supported, federal court deferred to IHO  
        22 determination that IEP did not offer FAPE).
- 23       c. The SRO erred in discounting the private neuropsychologist’s testimony,  
        24 in part, based on the fact that he “was not familiar with programs available  
        25 in the District.” *SRO Dec.* at 42. The private neuropsychologist lacked  
        26 familiarity with the programs that would be implemented because the IEP  
        27 did not specify any particular program and the District had failed to offer  
        28 “a cogent and responsive explanation for their decisions” that showed that  
        the IEPs were “reasonably calculated to enable [O.R.] to make progress  
        appropriate in light of the circumstances.” *Endrew F.*, slip op. at 16. It was  
        error to allow the District to fail to provide information and then fault the  
        neuropsychologist for not considering that information.
- 29       d. The SRO decision to reverse the IHO’s ruling that the goals and objectives  
        30 were not appropriate was not thorough and careful. The IHO correctly  
        31 found that the objectives were contrary to the Pettigru recommendations.  
        32 *IHO Dec.* at 8-9. The SRO states, in a conclusory manner, that the Pettigru  
        33 report contained “no contrary recommendations.” However, the Pettigru

1 report makes 29 separate recommendations that thoroughly address the  
2 type of instruction and instructional strategies that O.R. requires to  
3 perform her best and make cognitive and academic gains.

- 4 e. The SRO erred in reversing the IHO's determination that the District had  
5 not provided sufficient supervision for the social skills goals. *SRO Dec.* at  
6 49. After listening to the testimony of the District's Transition Specialist,  
7 making credibility determinations based upon that testimony, and  
8 reviewing the IEPs that did not provide explicitly for supervision and  
9 guidance by an adult in all classes, the IHO correctly determined that O.R.  
would not receive sufficient supervision and guidance in "specials" that  
were general education classes. *See IHO Dec.* at 16. There is nothing in  
the record to support the SRO's reversal of this finding.
- 10 f. The SRO erred in reversing the IHO's determination that the Parents'  
11 placement was appropriate. The IHO relied upon the Modifications and  
12 Accommodations Plan from the private school and the private  
13 neuropsychologist's assessment. *IHO Dec.* at 17-18. The evidence  
14 established that the methodologies used by the private schools conferred  
educational benefit, as the testimony proved that she had made meaningful  
progress both academically and socially. The District elicited no evidence,  
and the SRO cites none, to the contrary.

16 **COUNT I**  
17 **IDEA**  
18 **DENIAL OF FAPE**  
**All Plaintiffs v. Clark County School District**

- 19 43. Plaintiffs incorporate the previous paragraphs as if fully set forth herein.
- 20 44. The IHO correctly determined that the IEPs at issue denied a FAPE to O.R.
- 21 45. The SRO's decision reversing the IHO was not thorough and careful, because the  
22 SRO set aside the IHO's credibility determinations in reaching her decision.
- 23 46. The SRO's decision reversing the IHO was not thorough and careful, because the  
24 SRO supplemented the record with evidence relating to reading programs that were not included  
25 in the original IEPs. During the hearing process, when Parents requested information about those  
26 reading programs, Clark County refused to provide that information. Having refused to provide  
27  
28

the information during the IEP and hearing process, the District cannot use evidence related to those programs at the SRO level to provide a “cogent and responsive explanation for their decisions.” *Endrew F.*, slip op. at 16.

**COUNT II  
SECTION 504**

47. Plaintiff O.R. incorporates the previous paragraphs as if fully set forth herein.

48. The District has intentionally and purposefully violated the rights of O.R. secured by Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 and 34 C.F.R. § 104.4 by

- a. denying O.R. the opportunity to participate in and benefit from federally assisted regular education services, programs and activities, in violation of 29 U.S.C. § 794(a) and 34 C.F.R. § 104.4(a)(b)(I);
  - b. failing to provide O.R. an opportunity to participate in and benefit from education and related services that is at least equal to the opportunity afforded to students without disabilities in violation of 34 C.F.R. 104.4(b)(1)(iii), (2).

**COUNT III  
ADA**

49. Plaintiff O.R. incorporates the previous paragraphs as if fully set forth herein.

50. The District has intentionally and purposefully violated the rights of O.R. secured by the ADA, 42 U.S.C. § 12131 et seq. and 28 C.F.R. § 35.130, by:

- a. subjecting O.R. to discrimination and retaliation, in violation of 28 C.F.R. § 35.130(a) and 42 U.S.C. §12203;
  - b. excluding O.R. from participating in and denying her the benefit of District services, programs, and activities on this basis of her disability, in violation of 28 C.F.R. § 35.130(a);

- 1 c. denying O.R. the opportunity to participate in and benefit from aids,  
2 benefits and services on a basis equal with that afforded others, in  
3 violation of 28 C.F.R. § 35.130(b)(1)(ii);  
4 d. failing and refusing to make reasonable modifications in policies, practices,  
5 or procedures when the modifications are necessary to avoid  
6 discrimination against O.R., in violation of 28 C.F.R. § 35.130(b)(7);  
7 e. limiting O.R. in the enjoyment of rights, privileges, advantages, or  
8 opportunities enjoyed by others receiving the aid, benefit, or service, in  
9 violation of 28 C.F.R. § 35.130(b)(1)(vii);

#### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that the Court receive the record of the administrative proceeding and such additional evidence as may be required to render a just decision and award the following relief:

- 13 a) Reverse the decision of the SRO and hold that the District did not provide a FAPE to  
14 O.R. in violation of the IDEA and Section 504 and discriminated against O.R. in  
15 violation of Section 504 and the ADA;
- 16 b) Reinstate the IHO's award of tuition and transportation reimbursement to plaintiffs;
- 17 c) Award plaintiffs their reasonable attorney's fees and expert witness costs, including  
18 the fees and costs incurred in this action;
- 19 d) Award such other relief as the Court deems necessary and appropriate.

DATED this 6<sup>th</sup> day of June, 2017.

ROGICH LAW FIRM, PLLC

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